**CASE ANALYSIS OF SARLA MUDGAL V. UNION OF INDIA AIR 1951 SCC 635**

**BY**

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**Case Name: Sarla Mudgal v. Union Of India**

**Citation: 1995 AIR 1531, 1995 SCC (3) 635**

**Bench-**

* **KULDIP SINGH J.**
* **R.M.SAHAI j.**

**CASE ANALYSIS**

**SARLA MUDGAL V. UNION OF INDIA[[1]](#footnote-2)**

**INTRODUCTION:**

India is a country with diversities in all fields from people to their religion. This heterogeneity varies from region to region, community to community, which revolves around various personal laws, whether codifies or not. Back in 1950’s, Hindu personal laws were coded and given permanent shape through Hindu Succession Act, Hindu Marriage Act; whereas other personal laws are still ambiguous. This erratic system leads to irregularity in the society.

This case essentially brings forward the need of adopting Uniform Civil Code in India, and re-emphasised the marriage and divorce laws in inter-religion marriages.

**FACTUAL MATRIX:**

In Sarla Mudgal Case, there were four petitions filed under Article 32 of Indian Constitution which lays down right to constitutional remedies through Writ Petitions in Supreme Court.

* In the Writ Petition 1079/89, there were two petitioners. First is, Sarla Mudgal, Head and President of a registered society named ‘KALYANI’. This organisation primarily works for the welfare of needy families and women in distress.

 Another petitioner is Meena Mathur, who was married to Jitender Mathur on February 27, 1978 and had three children. In early 1988, the petitioner got to know about her husband’s second marriage with Sunita Narula alias Fathima, which they solemnised after converting into Islam.

* In Writ Petition 347 of 1990, Sunita Narula alias Fathima, contends that she along with Jitender Mathur who already had a marriage alive with Meena Mathur, converted into and adopted Islam and thereafter got married. A son was born to her. Further, she states that after marrying her, Jitender Mathur gave an undertaking in April, 1988 that he had reverted back to Hinduism and will be maintaining his wife and children out of first wedlock. She grieved for maintenance by her husband.
* In Writ Petition 424 of 1992, another petition was filed by Geeta Rani, married to Pradeep Kumar on November 13, 1988. She alleged that her husband used to maltreat and beat her due to which her jaw was broken. In December 1991, the petitioner learnt that Pradeep Kumar married to Deepa, after conversion to Islam. The petition stated that the conversion was only for the purpose of facilitating second marriage.
* In Civil Writ Petition 509 of 1992, Sushmita Ghosh, who was the petitioner, was married to G.C.Ghosh according to Hindu rites on May 10, 1984. In April 1992, her husband asked her to take divorce by mutual consent as he didn’t wanted to live with her. The petitioner prayed that she was his legally wedded wife and she wanted to live with her, so that divorce can be avoided. Her husband claims that he had obtained a certificate dated June 17, 1992 that he had embraced Islam and will soon marry one Vinita Gupta.

**CONTENTIONS BY PETITIONER**:

1. Meena Mathur contends that conversion of her husband to Islam was only for the purpose of marrying Sunita aka Fathima and circumventing the Provisions of Section 194 of IPC.
2. Sunita aka Fathima, as a petitioner pleads that after her husband reconverted into Hinduism, she continues to be a Muslim, not being maintained by her husband and has no protection in any of the personal laws.
3. Geeta Rani pleads that her husband converted into Islam only for the purpose of facilitating second marriage.
4. Sushmita Ghosh, in her writ petition, had prayed that her husband shall be restrained from entering into second marriage with Vinita Gupta.

**FACTS IN ISSUE**

* Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage?
* Whether such a marriage without having first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu?
* Whether apostate husband would be guilty of the offence under Section 494 of Indian Penal Code?
* Does India need a Uniform Civil Code for all its citizens?

**BIGAMY**

“Chains do not hold a marriage together. It is threads, hundreds of tiny threads, which sew people together through the years.”

-Simone Signoret

**Section 494** of Indian Penal Code, 1860 states that-

*"Marrying again during lifetime of husband or wife- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

This section has two exceptions as-

* any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction
* where the spouse has been continually absent for a period of 7 years and not heard to be alive within such period.

 The court, in ***Pashaura Singh v. State of Punjab***[[2]](#footnote-3), laid down necessary ingredients of Bigamy:

* Having a husband or wife living
* Marries in any case
* In which such marriages are void
* By reason of taking place during the life of such husband or wife.

The punishment of this offence under penal code is imprisonment of 7 years and fine. Bigamy is held as non-cognizable and bailable offence. The Hindu Marriage Act, 1955 also invalidates bigamy and prescribes punishment in the Act. Section 17[[3]](#footnote-4) states that-

Any marriage between two Hindus (including Buddhist, Jaina or Sikh) solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code (45 of 1860) shall apply accordingly.

The expression "void" for the purpose of the Act has been defined under Section 11 of the Act[[4]](#footnote-5). It has a limited meaning within the scope of the definition under the Section. On the other hand the sameexpression has a different purpose under Section 494, IPC and has to be given meaningful interpretation.

The offence of bigamy is compoundable with the consent of wife and permission of court[[5]](#footnote-6) and if a person is acquitted in a criminal case for bigamy, a departmental enquiry can be conducted against him or her.[[6]](#footnote-7) Also, to prove offence of bigamy, the prosecution must prove that the second marriage was valid.[[7]](#footnote-8)

**PARTY’S ARGUMENT WITH SUPPORT AUTHORITIES-**

The petitioners in the aforesaid case mainly resorted to declare marriage after conversion into Muslim religion and solemnise second marriage, so as to get free of punishment. People have found loopholes in Indian personal laws and these chinks have led to people committing bigamy by conversion, when the spouse is alive. Due to these irregularities in personal laws, the petitioners have contended the necessity of introduction of Uniform personal laws. This may help to resolve the problem and lead to national consolidation. The traditional Hindu law does not dissolve the marriage by conversion to other religion. The same is held in some precedents to this case. Precedents cited in support of the Petitioners-

* In ***Re Ram Kumari***[[8]](#footnote-9) ***case***, a Hindu wife converted to Muslim faith and married a Muslim. She was charged of bigamy under Section 494 of Indian Penal Code, as her earlier marriage with a Hindu husband was not dissolved by her conversion. It was held that there was no authority under Hindu law for the proposition that an apostate is absolved from civil obligations and matrimonial bond after conversion.
* Another case law which supported the argument of petitioner is the court’s judgement in ***Gul Mohammed v. Emperor***[[9]](#footnote-10), where a Hindu wife was taken away by a Mohammedan who converted her religion into Islam and married her. The court propounded that the conversion did not by the very fact (ipso facto) dissolved the marriage and her marriage with former husband is still valid.
* The court also cited the case of ***Nandi @ Zainab v. The crown***[[10]](#footnote-11), wherein the wife of the petitioner converted into Islam and then married a Muslim man named Rukan Din. She was charged with the offence of Bigamy under Section 494[[11]](#footnote-12) and it was held that this marriage could only be dissolved by a decree of court. Similar was the case in ***Emperor v. Mt. Ruri***[[12]](#footnote-13), in which a Christian wife embraced Islam and married a Muslim. The court held that, according to Christian personal laws, the first marriage is not dissolved and the second marriage amounts to bigamy.
* In ***Sayeda Khatoon’s Case***[[13]](#footnote-14), the parties were originally Jew, and plaintiff converted to Islam and was now governed by Mohammedan law. Justice Lodge expressed his dilemma on what personal law to be followed on the plaintiff. He dissented on the preference of Mohammedan law over Jewish law as there is no particular personal law followed in India. In India, people follow their personal laws and there is no matrimonial law of general application in India. He further clarified that marriage conducted according to one personal law can only be dissolved by the same law. Since, India doesn’t have general matrimonial laws, there is no authority for the view that a marriage solemnizes according to one personal law can be dissolved according to other personal law because of conversion.
* ***Sayeda Khatoon’s case***[[14]](#footnote-15) was approved by Justice Blagden of Bombay High Court in a case[[15]](#footnote-16) where parties where married according to Zoroastrian law and thereafter, wife embraced Islam and husband refused to do so. The wife claims that her marriage stands dissolved due to her conversion. Blagden J. dismissed the suit. The parties further appealed in higher authority where the matter was heard by division bench of Justice Stone and Justice Chagla, who resorted to determination of conclusion through the principles of natural justice of equity, justice and good conscience. The bench determined the consequences of plaintiff’s conversion to Islam and upheld the judgement of J. Blagden stating that the parties were married according to Zoroastrian rites and therefore, the marriage stand monogamous and can only be dissolved according to tenets of Zoroastrian religion.
* Another major judgement which was cited in the case of ***Andal Vaidyanathan vs. Abdul Allam Vaidya***[[16]](#footnote-17), where the judges dealt with the marriage under Special Marriage Act 1872. They held that the Act contemplates monogamy and person married under the Act cannot escape from its provisions by merely changing its religion. If such person re-marries again during the lifetime of spouse, then he commits bigamy, no matter any religion he/she possesses. Only Section 17 of the Act provides a way with dissolution of marriage. The judges hold that- “Consequently, where two persons married under the Act subsequently becomesconverted to Islam, the marriage can only be dissolved under the provisions of theDivorce Act and the same would apply even if only one of them becomes converted to Islam.

**LEGAL REASONING IN THE JUDGEMENT**

1. **Whether a Hindu husband, married under a Hindu law, by embracing Islam, solemnise a second marriage?**

The second marriage of a Hindu husband after embracing Islam is in violation of justice, equity and good conscience. Also, these circumstances also attract the provisions of bigamy under Section 494 of Indian Penal Code. The judges held that under the Hindu personal law, before its codification in 1955, a Hindu marriage exists even after conversion of one party to another religion leading to no automatic dissolution of marriage.The Hindu Marriage Act which applies to Hindus including Buddhists, Jain and Sikhs and excluding Muslims, Christians and Parsis, mentions overriding effect of the Act in Section 4 of the Act. A marriage solemnised, whether before or after the commencement of the Act, have an overriding effect and can only be dissolved by a decree of divorce on any of the grounds mentioned in Section 13 of the Act.

Section 13 (ii) of Hindu Marriage Act states conversion as one of the ground of divorce-

*‘that the other party has ceased to be a Hindu by conversion to another religion’*

They were of the view that when a marriage takes place under Hindu law and the parties acquire status and rights as governed under Hindu marriage and if one of the parties is allowed to destroy the marriage by adopting a new personal law, it would destroy the rights of existing spouse who continues to be a Hindu. A Hindu husband has right to embrace Islam as his religion but no right to marry again without getting the first marriage dissolved as per law.

The judges in this case agreed with J. Chagla in ***Robasa Khanum Case***[[17]](#footnote-18), that a matrimonial dispute between a convert to Islam and non-Muslim spouse is not a dispute where the parties are Muslims, and the rule of decision was not to be the ‘Muslim Personal Law”. Therefore, the courts shall act on the principles of equity, justice and good conscience. Keeping in mind the interests of both the communities and plurality of laws, the court came to a conclusion that a Hindu husband, after embracing Islam, cannot solemnise a second marriage without dissolving the first marriage.

1. **Whether such a marriage without having first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu?**

Several provisions of the Act like Section 5 (i)[[18]](#footnote-19) which states a primary condition of a Hindu marriage as neither party has a spouse living at the time of the marriage and strictly enforce monogamy. Any marriage performed under the act cannot be dissolved except according to the grounds mentioned in Article 13[[19]](#footnote-20).In that situation parties who have solemnised the marriage under the Act remain married even when the husband embraces Islam in pursuit of other wife. A second marriage by an apostate by conversion into Islam is a marriage in violation of the provisions of the Act by which he will be governed even after his conversion as his first marriage was performed according to Hindu rites. Therefore, the second marriage of an apostate would be invalid and illegal qua his wife who married him under the Hindu Marriage Act and continues to be a Hindu.

1. **Whether apostate husband would be guilty of the offence under Section 494 of Indian Penal Code?**

In the case of Sarla Mudgal, all the four ingredients of Section 497[[20]](#footnote-21) are satisfied when a Hindu husband who marries for the second time after conversion to Islam. He also has a wife living and then too marries again. The said marriage is void by the reason of its taking place during the life of the first wife. The court had promoted harmony between the two religions and interpreted the laws in such a way that Hindu laws and Muslims law work in their own ambit and does not trespass on each other’s persona law. The court therefore held that the second marriage of a Hindu husband after his conversion to Islam is a void marriage in terms of Section 494 of IPC.

1. **Does India need a Uniform Civil Code for all its citizens?**

The court propounded the need for Uniform Civil code in India to avoid the disturbance in administration by fixing the loopholes in laws. Justice Y.V. Chandrachud said in ***Mohd. Ahmed Khan vs. Shah Bano Begum***[[21]](#footnote-22), that” Uniform Civil Code as Article 44 of our Constitution has remained a dead letter and a common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.” The court also cited the judgement of ***Ms. Jordan Diengdeh vs. S.S. Chopra***[[22]](#footnote-23)- to emphasise the urgency of Article 44 to be adopted in India and referred to the judgement of J. Y.V. Chandrachud in ***Shah Bano case***[[23]](#footnote-24). The judges also expressed to the Government to adopt the Uniform Civil Code as soon as possible.

**UNIFORM CIVIL CODE**

"*The State shall endeavour to secure for the citizens a uniform civil code through-out the territory of India*" is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law.  In India the purpose of Uniform Civil code is to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. A uniform civil code will mean a set of common personal laws for all citizens. Currently, for example, there are different personal laws for Hindus and Muslims. Personal law covers property, marriage and divorce, inheritance and succession.

The UCC aims to provide protection to vulnerable sections as envisaged by Ambedkar including women and religious minorities, while also promoting nationalistic fervour through unity. When enacted the code will work to simplify laws that are segregated at present on the basis of religious beliefs like the Hindu code bill, Shariat law, and others. The code will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all.  The same civil law will then be applicable to all citizens irrespective of their faith. Justice R.M. Sahai was of the view that-

*“The pattern of debate, even today, is the same as was voiced forcefully by the members of the minority community in the Constituent Assembly. If, `the non-implementation of the provisions contained in Article 44 amounts to grave failure of Indian democracy' represents one side of the picture, then the other side claims that, `Logical probability appears to be that the code would cause dissatisfaction and disintegration than serve as a common umbrella to promote homogeneity and national solidarity'.”*

**International scenario of Uniform Civil Code**

Israel, Japan, France and Russia are strong today because of their sense of oneness which we have yet to develop and propagate. Virtually all countries have uniform civil code or for that matter uniform law- civil or criminal. The European nations and US have a secular law that applies equally and uniformly to all citizens irrespective of their religion. The Islamic countries have a uniform law based on shariah which applies to all individuals irrespective of their religion.

**CONCLUSION:**

In a country like India where marriage resorts to a sacrament, the loopholes of conversion and rendering the marriage null and void places an immense need to the government to go for and adopt the Uniform Civil Code so that people can be protected from each of the personal laws. The ruling in this case where a person cannot convert into other religion and leave the spouse from first marriage also acts like a bright light in darkness where equal status is given to all the citizens.

At last, I would like to conclude that citizens belonging to different religions and denominations follow different property and matrimonial laws which is not only an affront to the nation’s unity, but also makes one wonder whether we are a sovereign, secular, republic or a loose confederation of federal state, where people live at the whims and fancies of mullahs, bishops and pandits.

I strongly support the judgement in this case for the implementation of Uniform Civil Code and homogenising personal laws as it is the need of the hour. It is high time that country rich in diversities must have uniform law dealing with personal laws like divorce, marriage, succession and maintenance.

1. 1995 AIR 1531, 1995 SCC (3) 635 [↑](#footnote-ref-2)
2. (2010) 11 SCC 749 [↑](#footnote-ref-3)
3. Hindu Marriage Act, 1955 [↑](#footnote-ref-4)
4. Hindu Marriage Act. 1955 [↑](#footnote-ref-5)
5. Parmeshwari v. Vennila (2000) 10 SCC 348 [↑](#footnote-ref-6)
6. State of Karnataka v. T. Venkataramanappa (1996) 6 SCC 455 [↑](#footnote-ref-7)
7. S. Nagalingam v. Sivagami (2001) 7 SCC 487 [↑](#footnote-ref-8)
8. (1891) Calcutta 246 [↑](#footnote-ref-9)
9. AIR 1947 Nagpur 121 [↑](#footnote-ref-10)
10. ILR 1920 Lahore 440 [↑](#footnote-ref-11)
11. Section 494, Bigamy, Indian Penal Code, 1860 [↑](#footnote-ref-12)
12. AIR 1919 Lahore 389 [↑](#footnote-ref-13)
13. Sayeda Khatoon @ A.M. Obadiah vs. M. Obadiah 49 CWN 745 [↑](#footnote-ref-14)
14. Sayeda Khatoon @ A.M. Obadiah vs. M. Obadiah 49 CWN 745 [↑](#footnote-ref-15)
15. Robasa Khanum vs. Khodadad Bomanji Irani 1946 Bombay Law Reporter 864 [↑](#footnote-ref-16)
16. 1946 Madras 745 [↑](#footnote-ref-17)
17. Robasa Khanum vs. Khodadad Bomanji Irani 1946 Bombay Law Reporter 864 [↑](#footnote-ref-18)
18. Hindu Marriage Act, 1955 [↑](#footnote-ref-19)
19. Hindu Marriage Act, 1955 [↑](#footnote-ref-20)
20. Indian Penal Code, 1860 [↑](#footnote-ref-21)
21. AIR 1985 SC 945 [↑](#footnote-ref-22)
22. AIR 1985 SC 935 [↑](#footnote-ref-23)
23. Mohd. Ahmed Khan vs. Shah Bano Begum AIR 1985 SC 945 [↑](#footnote-ref-24)